रजिस्ट्री सं० डी० 221 REGISTERED No. D 221

भारत का राजपत्र
The Gazette of India

असाधारण
EXTRAORDINARY
भाग II—खंड 1
PART II—Section 1
प्राधिकार से प्रकाशित
PUBLISHED BY AUTHORITY

सं० 31] नई दिल्ली, शनिवार, जुलाई 19, 1969/आषाढ़ 28, 1891
No. 31] NEW DELHI, SATURDAY, JULY 19, 1969/ASADHA 28, 1891

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation

MINISTRY OF LAW

(Legislative Department)

New Delhi, the 19th July, 1969/Asadha 28, 1891 (Saka)

THE BANKING COMPANIES (ACQUISITION AND TRANSFER OF UNDERTAKINGS) ORDINANCE, 1969

No. 8 OF 1969

Promulgated by the Vice-President acting as President in the Twentieth Year of the Republic of India.

An Ordinance to provide for the acquisition and transfer of the undertakings of certain banking companies in order to serve better the needs of development of the economy in conformity with national policy and objectives and for matters connected therewith or incidental thereto.

WHEREAS Parliament is not in session and the Vice-President acting as President is satisfied that circumstances exist which render it necessary for him to take immediate action;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the Vice-President acting as President is pleased to promulgate the following Ordinance —

CHAPTER I

PRELIMINARY

1. (*1*) This Ordinance may be called the Banking Companies (Acquisition and Transfer of Undertakings) Ordinance, 1969. Short title and commencement.

(2) It shall come into force at once.

Definitions.

2. In this Ordinance, unless the context otherwise requires,—

(*a*) "banking company" does not include a foreign company within the meaning of section 591 of the Companies Act, 1956; 1 of 1956.

(*b*) "existing bank" means a banking company specified in column 1 of the First Schedule, being a company the deposits of which, as shown in the return as on the last Friday of June, 1969, furnished to the Reserve Bank under section 27 of the Banking Regulation Act, 1949, were not less than rupees fifty crores; 10 of 1949.

(*c*) "corresponding new bank", in relation to an existing bank, means the body corporate specified against such bank in column 2 of the First Schedule;

(*d*) "Custodian" means the Custodian referred to, or appointed, under section 10;

(*e*) "prescribed" means prescribed by rules made under this Ordinance;

(*f*) "Tribunal" means the Tribunal constituted under section 7;

(*g*) words and expressions used herein and not defined but defined in the Banking Regulation Act, 1949, have the meanings respectively assigned to them in that Act. 10 of 1949.

CHAPTER II

TRANSFER OF THE UNDERTAKINGS OF EXISTING BANKS

Establishment of corresponding new banks.

3. (*1*) On the commencement of this Ordinance, there shall be constituted such corresponding new banks as are specified in the First Schedule.

(*2*) The paid-up capital of every corresponding new bank constituted under sub-section (*1*) shall, until any provision is made in this behalf in any scheme made under section 13, be equal to the paid-up capital of the existing bank in relation to which it is the corresponding new bank.

(*3*) The entire capital of each corresponding new bank shall stand vested and allotted to the Central Government.

(*4*) Every corresponding new bank shall establish a reserve fund to which shall be transferred the balance, if any, standing to the credit of the appropriate existing bank and such further sums, if any, as may be transferred in accordance with the provisions of section 17 of the Banking Regulation Act, 1949. 10 of 1949.

(*5*) Every corresponding new bank shall be a body corporate with perpetual succession and a common seal and shall sue and be sued in its name.

(*6*) Every corresponding new bank shall carry on and transact the business of banking as defined in clause (*b*) of section 5 of the Banking Regulation Act, 1949, and may engage in one or more forms of business specified in sub-section (*1*) of section 6 of that Act. 10 of 1949

Under-taking of existing banks to vest in corres-ponding new banks.

4. On the commencement of this Ordinance, the undertaking of every existing bank shall be transferred to, and shall vest in, the corresponding new bank.

General effect of vesting.

5. (*1*) The undertaking of each existing bank shall be deemed to include all assets, rights, powers, authorities and privileges and all property, movable and immovable, cash balances, reserve fund, investments and all other rights and interests arising out of such property as were immediately before the commencement of this Ordinance in the ownership, possession, power or control of the existing bank in relation to the undertaking, whether within or without India, and all books of accounts, registers, records and all other documents of whatever nature relating thereto and shall also be deemed to include all borrowings, liabilities and obligations of whatever kind then subsisting of the existing bank in relation to the undertaking.

(*2*) If, according to the laws of any country outside India, the provisions of this Ordinance by themselves are not effective to transfer or vest any asset or liability situated in that country which forms part of the undertaking of an existing bank to, or in, the corresponding new bank, the affairs of the existing bank in relation to such asset or liability shall, on and from the commencement of this Ordinance, stand entrusted to the chief executive officer for the time being of the corresponding new bank, and the chief executive officer may exercise all powers and do all such acts and things as may be exercised or done by the existing bank for the purpose of effectively winding up the affairs of that bank.

(*3*) The chief executive officer of the corresponding new bank shall, in exercise of the powers conferred on him by sub-section (*2*), take all such steps as may be required by the laws of any such country outside India for the purpose of effecting such transfer or vesting, and in connection therewith may either himself or through any person authorised by him in this behalf realise any asset and discharge any liability of the existing bank.

(*4*) Notwithstanding anything contained in sub-section (*2*), on the commencement of this Ordinance, no person shall make any claim or demand or take any proceeding in India against any existing bank or any person acting in its name or on its behalf except in so far as may be necessary for enforcing the provisions of this section or except in so far as it relates to any offence committed by such person.

(*5*) Unless otherwise expressly provided by this Ordinance, all contracts, deeds, bonds, agreements, powers of attorney, grants of legal representation and other instruments of whatever nature subsisting or having effect immediately before the commencement of this Ordinance and to which the existing bank is a party or which are in favour of the existing bank shall be of as full force and effect against or in favour of the corresponding new bank, and may be enforced or acted upon as fully and effectively as if in the place of the existing bank the corresponding new bank had been a party thereto or as if they had been issued in favour of the corresponding new bank.

(6) If, on the date of commencement of this Ordinance, any suit, appeal or other proceeding of whatever nature is pending by or against the existing bank, the same shall not abate, be discontinued or be, in any way, prejudicially affected by reason of the transfer of the undertaking of the existing bank or of anything contained in this Ordinance, but the suit, appeal or other proceeding may be continued, prosecuted and enforced by or against the corresponding new bank.

Payment of compensation.

6. (1) The Central Government shall pay compensation to each existing bank for the acquisition of its undertaking and such compensation shall be determined in accordance with the principles specified in the Second Schedule and in the manner hereinafter set out, that is to say,—

(a) where the amount of compensation can be fixed by agreement, it shall be determined in accordance with such agreement;

(b) where no such agreement can be reached, the Central Government shall refer the matter to the Tribunal within a period of three months from the date on which the Central Government and the existing bank fail to reach an agreement regarding the amount of compensation.

(2) Notwithstanding that separate valuations are calculated under the principles specified in the Second Schedule in respect of the several matters referred to therein, the amount of compensation to be given shall be deemed to be a single compensation to be given for the undertaking as a whole.

(3) The amount of compensation determined in accordance with the foregoing provisions shall be paid to each existing bank in marketable Central Government securities and the form of such securities and the value thereof, computed with reference to their market value shall be such as the Central Government may, by notification in the Official Gazette, specify in this behalf:

Provided that where the amount of such compensation is not an exact multiple of the value of the Government security as so notified, the amount in excess of the nearest lower multiple of such value shall be paid by cheque drawn on the Reserve Bank.

Constitution of the Tribunal.

7. (1) The Central Government may, for the purposes of this Ordinance, constitute a Tribunal which shall consist of a Chairman and two other members.

(2) The Chairman shall be a person who is, or has been, a Judge of a High Court or of the Supreme Court, and, of the two other members, one shall be a person who, in the opinion of the Central Government, has had experience of banking and the other shall be a person who is a Chartered Accountant within the meaning of the Chartered Accountants' Act, 1949. 38 of 1949.

(3) If, for any reason, a vacancy occurs in the office of the Chairman, or any other member of the Tribunal, the Central Government may fill the vacancy by appointing another person thereto in accordance with the provisions of sub-section (2) and any proceeding may be continued before the Tribunal so constituted from the stage at which the vacancy had occurred.

(*4*) The Tribunal may for the purpose of determining any compensation payable under this Ordinance, choose one or more persons having special knowledge or experience of any relevant matter to assist in the determination of such compensation.

Tribunal to have powers of a Civil Court.

8. The Tribunal shall have the powers of a Civil Court, while trying a suit under the Code of Civil Procedure, 1908, in respect of the following matters, namely:— 5 of 1908.

(*a*) summoning and enforcing the attendance of any person and examining him on oath;

(*b*) requiring the discovery and production of documents;

(*c*) receiving evidence and affidavits;

(*d*) issuing commissions for the examination of witnesses or documents.

Procedure of the Tribunal.

9. (*1*) The Tribunal shall have power to regulate its own procedure.

(*2*) The Tribunal may hold the whole or any part of its inquiry *in camera*.

(*3*) Any clerical or arithmetical error in any order of the Tribunal or any error arising therein from an accidental slip or omission may, at any time, be corrected by the Tribunal either by its own motion or on the application of any of the parties.

CHAPTER III

MANAGEMENT OF CORRESPONDING NEW BANKS

Head office and branches.

10. (*1*) The head office of each corresponding new bank shall be at such place as the Central Government may, by notification in the Official Gazette, specify in this behalf, and, until any such place is so specified, shall be at the place at which the head office of the existing bank in relation to which it is a corresponding new bank, is on the date of the commencement of this Ordinance, located

(*2*) The general superintendence and direction of the affairs and business of a corresponding new bank shall, until any provision to the contrary is made under any scheme made under section 13, be vested in a Custodian, who shall be the chief executive officer of that bank.

(*3*) The Chairman of the existing bank holding office as such immediately before the commencement of this Ordinance, shall be the Custodian of the corresponding new bank and shall receive the same emoluments as he was receiving immediately before such commencement:

Provided that the Central Government may, if it is of opinion that it is necessary so to do, appoint any other person as the Custodian of a corresponding new bank and the Custodian so appointed shall receive such emoluments as the Central Government may specify in this behalf.

(*4*) The Custodian shall hold office during the pleasure of the Central Government.

Corresponding new bank to be guided by the directions of the Central Government

11 (*1*) Every corresponding new bank shall, in the discharge of its functions, be guided by such directions in regard to matters of policy involving public interest as the Central Government may, after consultation with the Governor of the Reserve Bank, give.

(2) If any question arises whether a direction relates to a matter of policy involving public interest, it shall be referred to the Central Government and the decision of the Central Government thereon shall be final.

Advisory Board to aid and advise the Custodian.

12. (1) There shall be an Advisory Board to aid and advise the Custodian in the discharge of his duties:

Provided that the Advisory Board shall be dissolved on the constitution of a Board of Directors under clause (b) of sub-section (2) of section 13:

Provided further that the Central Government may, if it is of opinion that it is necessary so to do, dissolve the Advisory Board at any other time.

(2) The Advisory Board shall consist of such persons as the Central Government may, by notification in the Official Gazette, appoint.

Power of Central Government to frame scheme.

13. (1) The Central Government may, after consultation with the Reserve Bank, frame a scheme for carrying out the provisions of this Ordinance in relation to existing banks

(2) In particular, and without prejudice to the generality of the foregoing power, the said scheme may provide for all or any of the following matters, namely:—

(a) the capital structure of the corresponding new bank, so however that the paid-up capital of any such bank shall not be in excess of fifteen crores of rupees;

(b) the constitution of the Board of Directors, by whatever name called, of the corresponding new bank and all such matters in connection therewith or incidental thereto as the Central Government may consider to be necessary or expedient;

(c) the manner of the payment of the compensation to the shareholders of the existing bank;

(d) such incidental, consequential and supplemental matters as may be necessary to carry out the provisions of this Ordinance.

CHAPTER IV

MISCELLANEOUS

Closure of accounts and disbursal of profits

14. (1) Every corresponding new bank shall cause its books to be closed and balanced on the 31st day of December of each year and shall appoint, with the previous approval of the Reserve Bank, auditors for the audit of its accounts.

(2) The audited accounts of every corresponding new bank shall be verified and signed and transmitted to the Central Government and the Reserve Bank in such manner as may be prescribed.

(3) After making provisions for bad and doubtful debts, depreciation in assets, contributions to staff and superannuation funds and all other matters for which provision is necessary under any law, or which are usually provided for by banking companies, a corresponding bank shall transfer the balance of profits to the Central Government.

Removal from office of directors, etc.

15. (1) Every person holding office as Chairman, Managing or other Director of an existing bank, shall be deemed to have vacated office on the commencement of this Ordinance.

(2) Save as otherwise provided in sub-section (1), all officers and other employees of an existing bank shall become, on the commencement of this Ordinance, officers or other employees of the corresponding new bank and shall hold their offices or services in that bank on the same terms and conditions and with the same rights to pension, gratuity and other matters as would have been admissible to them if the undertaking of the existing bank had not been transferred and vested in the corresponding new bank.

(3) For the persons who immediately before the commencement of this Ordinance were the trustees for any pension or provident fund constituted for the officers or other employees of an existing bank, there shall be substituted as trustees such persons as the Central Government may, by general or special order, specify.

14 of 1947.

(4) Notwithstanding anything contained in the Industrial Disputes Act, 1947, or in any other law for the time being in force, the transfer of the services of any officer or other employee from an existing bank to a corresponding new bank shall not entitle such officer or any other employee to any compensation under this Ordinance or any other law for the time being in force and no such claim shall be entertained by any court, tribunal or other authority.

Obligations as to fidelity and secrecy.

16. (1) Every corresponding new bank shall observe, except as otherwise required by law, the practices and usages customary among bankers, and, in particular, it shall not divulge any information relating to or to the affairs of its constituents except in circumstances in which it is, in accordance with law or practice and usage customary among bankers, necessary or appropriate for the corresponding new bank to divulge such information.

45 of 1860.

Custodian to be public servant.

(2) Every Custodian of a corresponding new bank shall be deemed to be a public servant for the purpose of Chapter IX of the Indian Penal Code.

Certain defects not to invalidate acts or proceedings.

17. All acts done by the Custodian, acting in good faith, shall, notwithstanding any defect in his appointment or in the procedure, be valid.

Indemnity.

18. Every Custodian of a corresponding new bank and every officer of the Central Government and of the Reserve Bank shall be indemnified by such bank against all losses and expenses incurred by him in or in relation to the discharge of his duties except such as has been caused by his own wilful act or default.

References to existing banks on and from the commencement of this Ordinance.

19. Any reference to any existing bank in any law, other than this Ordinance, or in any contract or other instrument shall be construed as a reference to the corresponding new bank in relation to it.

Dissolution of existing banks.

20. Notwithstanding anything contained in any other law for the time being in force, an existing bank shall, on such date as the Central Government may, by notification in the Official Gazette, specify in this behalf, stand dissolved.

Power to make rules.

21. (*1*) The Central Government may, for the purpose of carrying out the provisions of this Ordinance, make such rules as it may think fit.

(*2*) In particular, and without prejudice to the generality of the foregoing powers, such rules may provide for all or any of the following matters, namely:—

(*a*) the manner in which the business of the Advisory Board shall be transacted and the procedure to be followed at the meetings thereof;

(*b*) fees and allowances which may be paid to members of the Advisory Board for attending any meetings of the Board or of any Committee that may be constituted by the Board;

(*c*) the formation of any Committee whether of the Advisory Board or of the corresponding new bank and the delegation of powers and functions of such Committees;

(*d*) any other matter which is required to be, or may be, prescribed.

(*3*) Every rule made by the Central Government under this Ordinance shall be laid, as soon as may be, after it is made, before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two successive sessions, and if, before the expiry of the session in which it is so laid or the session immediately following, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

Amendment of the Banking Regulation Act, 1949.

22. In the Banking Regulation Act, 1949,— 10 of 1949

(*a*) in sub-section (3) of section 34A, for the words "any subsidiary bank", the words "a corresponding new bank constituted under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Ordinance, 1969, and any subsidiary bank" shall be substituted;

(*b*) in sub-section (*3*) of section 36AD, for the words "any subsidiary bank", the words "a corresponding new bank constituted under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Ordinance, 1969, and any subsidiary bank" shall be substituted.

(*c*) in section 51, for the words "or any other banking institution notified by the Central Government in this behalf", the words "or any corresponding new bank constituted under section 3 of the

Banking Companies (Acquisition and Transfer of Undertakings) Ordinance, 1969, or any other banking institution notified by the Central Government in this behalf" shall be substituted.

Removal of difficulties.

23. If any difficulty arises in giving effect to the provisions of this Ordinance, the Central Government may make such order, not inconsistent with the provisions of the Ordinance, as may appear to it to be necessary for the purpose of removing the difficulty.

THE FIRST SCHEDULE

(*See* sections 2, 3 and 4)

Column 1	Column 2
Existing bank	*Corresponding new bank*
Central Bank of India, Ltd.	Central Bank of India.
Bank of India, Ltd.	Bank of India.
Punjab National Bank, Ltd.	Punjab National Bank.
Bank of Baroda, Ltd.	Bank of Baroda.
United Commercial Bank, Ltd.	United Commercial Bank.
Canara Bank, Ltd.	Canara Bank.
United Bank of India, Ltd.	United Bank of India.
Dena Bank, Ltd.	Dena Bank.
Syndicate Bank, Ltd.	Syndicate Bank.
Union Bank of India, Ltd.	Union Bank of India.
Allahabad Bank, Ltd.	Allahabad Bank.
Indian Bank, Ltd.	Indian Bank.
Bank of Maharashtra, Ltd.	Bank of Maharashtra.
Indian Overseas Bank, Ltd.	Indian Overseas Bank.

THE SECOND SCHEDULE

(*See* section 6)

PRINCIPLES OF COMPENSATION

1. The compensation to be paid by the Central Government to each existing bank in respect of the acquisition of the undertaking thereof shall be an amount equal to the sum-total of the value of the assets of the existing bank as on the commencement of this Ordinance, calculated in accordance with the provisions of Part I, less the sum-total of the liabilities computed and obligations of the existing bank calculated in accordance with the provisions of Part II.

Part I.—Assets

For the purposes of this Part "assets" means the total of the following:—

(*a*) the amount of cash in hand and with the Reserve Bank and the State Bank of India (including foreign currency notes which shall be converted at the market rate of exchange);

(*b*) the amount of balances with any bank whether on deposit or currency account, and money at call and short notice, balances held outside India being converted at the market rate of exchange:

Provided that any balances which are not realisable in full shall be deemed to be debts and valued accordingly;

(*c*) the market value, as on the day immediately before the commencement of the Ordinance, of any securities, shares, debentures, bonds and other investments, held by the bank concerned.

Explanation.—For the purpose of this clause—

(*i*) securities of the Central and State Governments [other than the securities specified in sub-clauses (*ii*) and (*iii*) of this *Explanation*] maturing for redemption within five years from the commencement of the Ordinance shall be valued at the face value or the market value, whichever is higher;

(*ii*) securities of the Central Government, such as Post Office Certificates and Treasury Savings Deposit Certificates and any other securities or certificates issued or to be issued under the Small Savings Scheme of the Central Government, shall be valued at their face value or the encashable value as on the day immediately before the commencement of the Ordinance, whichever is higher;

(*iii*) where the market value of any Government security such as the zamindari abolition bonds or other similar security in respect of which the principal is payable in instalments, is not ascertainable or is, for any reason, not considered as reflecting the fair value thereof or as otherwise appropriate the security shall be valued at such an amount as is considered reasonable having regard to the instalments of principal and interest remaining to be paid, the period during which such instalments are payable, the yield of any security, issued by the Government to which the security pertains and having the same or approximately the same maturity, and other relevant factors;

(*iv*) where the market value of any security, share, debenture, bond or other investment is not considered reasonable by reason of its having been affected by abnormal factors, the investment may be valued on the basis of its average market value over any reasonable period;

(*v*) where the market value of any security, share, debenture, bond or other investment is not ascertainable, only such value, if any, shall be taken into account as is considered reasonable having regard to the financial position of the issuing concern, the dividend paid by it during the preceding five years and other relevant factors;

(*d*) the amount of advances (including loans, cash credits, overdrafts, bills purchased and discounted) and other debts, whether secured or unsecured, to the extent to which they are reasonably considered recoverable, having regard to the value of the security, if any, the operation on the account, the reported worth and responsibility of the borrower, the prospects of realisation and other relevant considerations;

(*e*) the value of any land or buildings;

(*f*) the total amount of the premia paid, in respect of all leasehold properties, reduced in the case of each such premium by an amount which bears to such premium the same proportion as the

expired term of the lease in respect of which such premium shall have been paid bears to the total term of the lease;

(*g*) the written down value as per books, or the realisable value, as may be considered reasonable, of all furniture, fixtures and fittings;

(*h*) the market or realisable value, as may be appropriate, of other assets appearing on the books of the bank, no value being allowed for capitalised expenses, such as share selling commission, organisational expenses and brokerage, losses incurred and similar other items.

Part II.—Liabilities

For the purposes of this Part "liabilities" means the total amount of all outside liabilities existing at the commencement of the Ordinance, and all contingent liabilities which the corresponding new bank may reasonably be expected to be required to meet out of its own resources on or after the date of commencement of the Ordinance.

CERTAIN DIVIDENDS NOT TO BE TAKEN INTO ACCOUNT

2. No separate compensation shall be payable for any profits or any dividend in respect of any period immediately preceding the commencement of the Ordinance for which, in the ordinary course, profits would have been transferred or dividend declared after the commencement of the Ordinance.

V. V. GIRI,
Vice-President acting as President.

N. D. P. NAMBOODIRIPAD,
Joint Secy. to the Govt. of India.

PRINTED BY THE GENERAL MANAGER, GOVERNMENT OF INDIA PRESS, NEW DELHI AND PUBLISHED BY THE MANAGER OF PUBLICATIONS, DELHI, 1969